cases enough to make a contract, and, according to the opinion of the majority, it makes one in this case. The contract is to sell goods and to sign a written paper as evidence, and because one of the parties refuses to sign the paper, *non sequitur* that the other may not prove the contract by other legal evidence.

The New York Court divided in the same way on the same question in 1860. *Pratt* v. *The Hudson River R. R.*, 21 N. Y. 305.

COURT AND JURY. — During the trial of the case of *Cahill* v. *Chicago, Milwaukee & St. Paul Railway Co.*, in the Circuit Court of the United States at Chicago (Chicago Law Journal, January, 1895, p. 4), the judge directed the jury to find a verdict for the defendant. This one of the jurymen refused to do, and he was, as a consequence, ordered into the custody of the marshal. Before the question of contempt, however, came on for hearing, the verdict was accepted by the plaintiff's attorney subject to exceptions. The point raised during the trial was, nevertheless, of such novelty and importance that it received no little discussion in the current papers. The reason why such questions seldom arise is, probably, because judges ordinarily try to avoid coming into conflict with the jury, and generally, in some tactful manner or other, avoid the dispute. Indeed, such finesse is almost always necessary in handling a somewhat unmanageable body like our jury, which is much easier led than driven. In a very similar case in Vermont, for example, the judge told the jury he would not insist if they thought his action wrong, but that they had better consider the situation carefully before coming to any conclusion. They followed his advice, deliberated, and finally went his way. Here, however, no such conciliatory measures were adopted, and the result was a temporary conflict, in which the rights of the jury were substantially involved. It would seem as if *Bushell's Case* (Vaughan, 135, 142, 147–149), decided in 1670, had settled the law on this subject once for all. Indeed, although that decision might well have been regarded as somewhat weakened because it went on a conception of the jury which no longer prevails (Thayer's Cas. on Evidence, 5–19), it has nevertheless been considered undoubted law up to the present time; and wisely so, it would appear. It is only right that the functions of the court, as trier of law, and the jury, as trier of fact, should be carefully distinguished (Thayer's Cas. on Evidence, 143–238), and although the juryman would be undoubtedly justified, legally and morally, in returning a finding of facts which he does not believe in, if so ordered to do, yet it is hard to see what right the judge has to coerce the jury to arrive at his result. An honest man, laboring under a misunderstanding as to the weight and meaning of the words "law and fact" in his oath, might well refuse to tell what he regarded as a gross lie. The advantage of punishing him for so doing is by no means apparent, as such a method is, it would seem, against the usually accepted doctrine, and is at best a useless exercise of authority, when the same result might be as easily accomplished in a more peaceful way.

MALICE. — A point of considerable interest, though not entirely new, has just been decided by Kekewich, J., in the recent English case of *Trollope & Sons et al.* v. *London Building Trades Federation* (11 *The*